UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CARSON OPTICAL, INC., *Plaintiff,* v. RQ INNOVASION, INC. and BRENDAN ZHENG, *Defendant.*	Civil Action No: 1:16-cv-01157-LDW-ARL **DECLARATION OF BRENDAN ZHENG**

I, Brendan Zheng, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am a shareholder and a director of RQ Innovasion, Inc. ("RQ"), and as such, have authority to discuss RQ's business. RQ and I have been implicated by various false allegations made by plaintiff Carson Optical, Inc. ("Plaintiff") herein. I thus submit this affidavit upon personal knowledge and from review of the relevant business records of RQ. If called as a witness could and would testify to the matters set forth herein.

2. I have never conducted any business activities in the State of New York.

3. I have never received any income or revenue from business activities in New York, from interstate or international commerce involving New York.

4. I have always exclusively been a domiciliary and citizen of Canada.

5. I have never resided in New York.

6. I have never and currently do not own or lease any real or personal property located in New York, in my individual or any other capacity.

7. I have never and currently do not have any bank or investment accounts of any type in New York in my individual or any other capacity.

8. I have never bought or sold and current do not buy or sell any assets in New York in my individual or any other capacity.

9. I have never employed and currently do not employ anyone in New York in my individual or any other capacity, other than the attorneys that temporarily represent me in relation to the instant proceeding.

10. I have never been and am currently not an owner or officer of any business that is registered in New York.

11. I have never been and am currently not a controlling shareholder of any corporation that is registered in New York.

12. I have never instituted any legal action in New York.

13. I have never in my individual or any other capacity made any contribution or donation to any charitable or non-profit organization(s) in New York.

14. I have never in my individual capacity or any other capacity had any mailing address in New York.

15. I have engaged in any activity that would subject me to the protection of the laws of the State of New York.

16. While I am a director of RQ, RQ has other staff, directors, shareholders and decision makers with respect to RQ's business. I do not have authority or a license to independently operate RQ's business, including but not limited to operating the website at <shopfancii.com>, in my individual capacity. All operations of <shopfancii.com> are conducted by RQ's staff.

17. Besides myself, RQ's board of directors also includes Markus Zerulla, who also has significant decision-making authority as to the nature of RQ's business.

18. RQ's staff includes 4 to 5 independent contractors and freelance developers, including a contractor who maintains the FANCII® website, a contractor who handles all customer service, a product sourcing agent, a sales manager/purchasing agent and a graphic designer.

19. I have never conducted business as RQ in my individual capacity.

20. Contrary to the impression giving in the Complaint, I am not the only party at RQ and I do not exercise 100% control over RQ's operations.

21. In short, RQ is not a one-man operation, but a full functional business.

22. RQ maintains its principal place of business in Canada.

23. RQ is in the business of, *inter alia*, designing and distributing magnifying glass products.

24. RQ conducts some of its business via operation of the website located at the domain name <buy.shopfancii.com>, which provides information about its FANCII®-branded products and allows users to contact RQ in Canada.

25. RQ's products are not available for purchase at retail stores, in New York or anywhere.

26. RQ's products are available for purchase at the Fancii Website, and via links to Amazon.com and eBay.com.

27. With respect to sales on Amazon.com, RQ participates in Amazon's "Fulfilled by Amazon" ("FBA") program and ships its items in large batches to various Amazon fulfillment warehouses, none of which are New York, where Amazon packs and ships them to Amazon.com customers.

28. RQ has no control over Amazon's website or Amazon's cross-product advertisements and does not use "Carson," any of Carson's trademarks or any other parties' trademarks in its own keyword advertising.

29. Notwithstanding same, only a relatively small percentage of RQ's products sold by Amazon.com, eBay.com or through the Fancii Website reach customers in New York: less than 6% of Amazon and eBay sales since 2015 to the present and less than 3% of sales (5 total transactions) via the Fancii Website.

30. In order to sell goods on Amazon, RQ had to agree to Amazon's terms of use (See **Exhibit A**). Those terms do not require that parties collect or pay state sales taxes. Indeed, Amazon's own terms state that "[s]ellers may have different tax collection obligations, depending upon their business policies and the location of their operation." (*See* https://www.amazon.com/gp/help/customer/display.html?nodeId=201133310, last accessed on February 15, 2017). Thus, Carson's statement that RQ or any other seller "agree[s]" to "collect and pay taxes," even in places it is not obligated to do so, is false.

31. Furthermore, RQ has no control over Amazon's website or Amazon's cross-product advertisements.

32. RQ has utilized Amazon's Sponsored Products advertising service. This service helps businesses promote the products they list on Amazon. (See **Exhibit B**).

33. RQ has also utilized Amazon's Sponsored Products Campaigns. This service enables businesses to group their ads under a common advertising budget and dates using one or more ad groups containing different ads and keywords. (See **Exhibit C**).

34. There are two types of targeting for Sponsored Products Campaigns: automatic and manual. (See **Exhibit D**). In Sponsored Product Campaigns using automatic targeting,

Amazon selects keywords and targets ads to all possible relevant customer searches based on the product. Essentially, Amazon chooses to use keywords that will serve ads of products similar to another product.

35. RQ uses automatic targeting in their Sponsored Product Campaigns. RQ does not use manual targeting for its keyword advertising. RQ has no control over the process of selecting keywords or placing ads on Amazon and does not use "Carson," any of Carson's trademarks or any other parties' trademarks in its own keyword advertising.

36. RQ does not have an address in New York.

37. RQ does not maintain any bank account in New York.

38. RQ does not own any real or personal property in New York.

39. RQ does not have any agents in New York

40. RQ does not have any employees in New York.

41. RQ does not buy or sell any assets in New York.

42. RQ is not the owner or officer of any business in New York.

43. RQ is not the controlling shareholder of any corporation registered in New York.

44. RQ has never instituted any legal action in New York.

45. I respectfully request that Motion be granted.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated this 15th day of February, 2017.

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BRENDAN ZHENG

Exhibit A

Terms of Use

Last Updated: May, 2015

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- A specific description of where the material that you claim is infringing is located on the Amazon Service;
- Your address, telephone number, and e-mail address;
- A statement by you that you have a good-faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
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- P.O. Box 81226
- Seattle, WA 98108
- phone: (206) 266-4064
- fax: (206) 266-7010

- e-mail: copyright@amazon.com

- **Courier address:**
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- Amazon
- 410 Terry Avenue North
- Seattle, WA 98109-5210

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Exhibit B

Advertise on Amazon with Sponsored Products

Sponsored Products Overview

Sponsored Products is an advertising service that helps you promote the products you list on Amazon.com.

You choose which products you want to advertise, assign keywords to those products, and enter a cost-per-click bid. When an Amazon shopper searches for one of your keywords, your ad is eligible for display alongside the search results. You pay a fee for this program only when an Amazon shopper clicks your ad, at which point the shopper is taken to the detail page where your offer is listed.

Sponsored Products gives you more control over product merchandising on Amazon.com. Targeted ads help you boost the visibility of your products when shoppers search for keywords you bid on.

Sponsored Products is open in the following Amazon search categories:

- Appliances
- Arts, Crafts & Sewing
- Automotive & Powersports
- Baby
- Beauty
- Cell Phones & Accessories
- Clothing & Accessories
- Collectibles
- Computers
- Electronics-Audio/Video
- Electronics-Mobile

- Outdoors
- Patio, Lawn & Garden
- Pet Supplies
- Shoes
- Software
- Sports
- Tools & Home Improvement
- Toys & Games
- Video Games
- Watches

Note: At this time, we are not accepting new applications from sellers to list products within the Jewelry and Camera categories. These categories are committed to providing our customers with the best shopping experience possible, and we are currently working on enhancements to the customer experience. While that work is underway, we will not be accepting new sellers in these categories.

Basic requirements:

- An active professional seller account
- Ability to ship to all U.S. addresses
- A valid credit card
- Product listings in one or more of the available categories. Products must be new. Used products are not eligible for Sponsored Products.
- Listings are eligible for the Buy Box.

How Sponsored Products is structured:

Sponsored Products is structured into three components: advertising settings, campaigns, and ad groups.

- **Advertising settings** include your advertising payment method and account daily budget cap (optional).
- A **campaign** has a daily budget, start and end dates for running the campaign, and a setting for targeting type (manual or automatic).
- An **ad group** in a campaign with **manual targeting** consists of similar SKUs that share the same maximum default cost-per-click bid and the same set of keywords. An **ad group** in campaign with **automatic targeting** consists of SKUs that share the same maximum cost-per-click bid.

Advertising Settings
• Advertising payment method • Account daily budget cap (optional)

Campaign #1		Campaign #2	
• Targeting type: automatic • Average daily budget • Start date • End date (optional)		• Targeting type: manual • Average daily budget • Start date • End date (optional)	
Ad group A	**Ad group B**	**Ad group C**	**Ad group D**
• Ads • Maximum bid	• Ads • Maximum bid	• Ads • Maximum default bid • Keywords	• Ads • Maximum default bid • Keywords

Related Topics:

Exhibit C

Amazon.com Help: Sponsored Products Campaigns

A campaign is a way to group your ads under a common advertising budget and dates. A campaign consists of one or more ad groups, which contain different ads and keywords.

For example, you might create a campaign for a specific line of products (e.g. women's watches), for a specific season (e.g. summer), for a special event or holiday (e.g. Halloween), or any other framework that helps you manage your ads.

Watch this short video explaining the components of an Amazon Sponsored Products campaign:

The essential elements of a campaign are the campaign name, start and end dates, targeting type, daily budget, and ad groups.

Campaign name

Assign a campaign name that is descriptive and meaningful to you. Campaign names must be unique. Your campaign name will be used for Seller Central display purposes only and will not be visible to customers.

Start and end dates

These are the dates you choose for your ad campaign to start and stop. The end date is optional. If you do not select an end date your campaign will run indefinitely.

Ad group

Campaigns are made up of one or more ad groups. Ad groups include the SKUs you wish to advertise and the keywords used for targeting your Ads. The ad group is where you set the cost-per-click bid.

Related Topics:

Exhibit D

Amazon.com Help: Targeting Type

There are two targeting types for Sponsored Products campaigns: **automatic targeting** and **manual targeting**.

Automatic targeting

Campaigns with automatic targeting are designed to generate more search traffic to your ads because Amazon targets your ads to all possible relevant customer searches based on your product information.

Watch this short video demonstrating how to set up a campaign with automatic targeting.

The maximum cost per click (max. CPC) you set for an ad group with automatic targeting applies to all ad clicks regardless of the search terms that produced impressions.

Once your campaign is running, you can view which customer searches resulted in ad impressions and clicks. Go to **Reports** and select **Advertising Reports** to access the **Automatic Targeting** report. The report will be available beginning the day after your campaign starts.

Note: Depending on the number of SKUs you select for your campaign, it's possible there will be thousands of keywords that are included in your Automatic Targeting report.
View tips for analyzing your campaigns.

Manual targeting

Campaigns with manual targeting use keywords you specifically select to display your ads. Amazon matches the keywords contained in your Ad Group to the search terms that customers are using on Amazon.com.

Watch this short video demonstrating how to set up a campaign with automatic targeting.

You can choose from the list of recommended keywords, add your own keywords, or use a combination of the two. You have the option of using a default bid that applies to all of your selected keywords, or you can set a custom bid for individual keywords when creating your ad group and when viewing the **Keywords** tab for the ad group.

You can view the performance of your manually selected keywords by clicking your campaign name, clicking the ad group name, then selecting the **Keywords** tab.

View tips for analyzing your campaigns.